



FILED

Apr 16 2008, 10:27 am

Kevin L. Smith

CLERK

of the supreme court,
court of appeals and
tax court

ATTORNEYS FOR APPELLEES:

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**IN THE
COURT OF APPEALS OF INDIANA**

No. 02A05-0706-CV-303

Appellees-Plaintiffs.

APRIL 16, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Appellants-Plaintiffs James V., Jill, and Madison Lemmon appeal the trial court's grant of two motions to dismiss pursuant to Trial Rule 12(B)(6) in favor of 1) Appellees-Defendants Karen Richards, in her official capacity as the Allen County Prosecutor; the Allen County Prosecutor's Office; and unknown employees of the Allen County Prosecutor's office, in their official capacities; as well as 2) James Herman, in his official capacity as the Allen County Sheriff; the Allen County Sheriff's Department; and unknown employees of the Allen County Sheriff's Department, individually and in their official capacities.

We affirm.

ISSUE

The sole issue for our review is whether the trial court erred in granting the motions to dismiss.

FACTS AND PROCEDURAL HISTORY

In April 2005, an Allen County Prosecutor's Office employee incorrectly keyed in data during the issuance of an arrest warrant. The warrant should have been for James E. Lemmon, but the name keyed in was James V. Lemmon. As a result of the error, police arrested James V. Lemmon at his home in front of his wife, Jill, and daughter, Madison. Lemmon was incarcerated for several hours before the error was discovered.

The following year, Lemmon, his wife, and his daughter filed a nine-count complaint against the Allen County Sheriff, the Sheriff's Department, unnamed employees of the Sheriff's Department, the Allen County Prosecutor, the Prosecutor's Office, and unnamed employees of the Prosecutor's Office, (collectively, the Defendants). The complaint included the following counts: 1) false arrest; 2) false imprisonment; 3) battery; 4) false light invasion of privacy; 5) negligence in preparation of a warrant; 6) negligence in service of a warrant; 7) negligent infliction of emotional distress; 8) intentional infliction of emotional distress; and 9) invasion of privacy. The Lemmons also sought punitive damages.

The Defendants filed motions to dismiss pursuant to Trial Rule 12(B)(6) wherein they alleged that the Lemmons had failed to state claims for relief. The trial court granted the motions, and the Lemmons appeal.

DISCUSSION AND DECISION

The standard of review of a trial court's grant of a motion to dismiss for failure to state a claim under Ind. Trial Rule 12(B)(6) is de novo. *Gordon v. Purdue University*, 862 N.E.2d 1244, 1250 (Ind. Ct. App. 2007). We do not defer to the trial court's decision because deciding a motion to dismiss based upon a failure to state a claim involves a pure question of law. *Id.* A motion to dismiss under Rule 12(B)(6) tests the legal sufficiency of the complaint, not the facts supporting it. *Godby v. Whitehead*, 837 N.E.2d 146, 149 (Ind. Ct. App. 2005), *trans. denied*. Therefore, we view the complaint in the light most favorable to the nonmoving party. *Id.* The trial court's grant of a motion to dismiss is proper if it is apparent that the facts alleged in the complaint are incapable of supporting relief under any set of circumstances. *Id.* In determining

whether any facts will support the claim, we look only to the complaint and may not resort to any other evidence in the record. *Id.*

I. Allen County Prosecutor's Office

The Lemmons first argue that the trial court erred in granting the motion to dismiss filed by the Allen County Prosecutor, the Prosecutor's Office, and unnamed employees of the Prosecutor's Office, in their official capacities. The defendants from the Prosecutor's Office argue that they have immunity under the Indiana Torts Claims Act because the Lemmons' losses resulted from the initiation of a judicial proceeding. The Lemmons respond that pursuant to Ind. Code § 34-13-3-3(8), the immunity does not extend to their claims of false imprisonment and false arrest.

According to the Lemmons' complaint, the defendants in the prosecutor's office committed false arrest and false imprisonment when they issued an arrest warrant without probable cause. However, the defendants in the prosecutor's office did have probable cause to issue a warrant for James E. Lemmon. An employee simply keyed in an incorrect middle initial, and the warrant was issued for James V. rather than James E. Lemmon. The issue is therefore not whether the defendants in the prosecutor's office committed false arrest and false imprisonment but rather whether these defendants are immune from liability in their negligent issuance of the warrant. We find that they are.¹

Immunity assumes negligence but denies liability. *Bushong v. Williamson*, 790 N.E.2d 467, 472 (Ind. 2003). The purpose of immunity is to ensure that public employees can exercise

¹ Because the issue is one of negligence rather than false imprisonment and arrest, we need not address the Lemmons' argument that immunity does not extend to their claims. *See* Ind. Code § 34-13-3-3(8).

their independent judgment necessary to carry out their duties without threat of harassment by litigation or threats of litigation over decisions made within the scope of their employment. *Id.*

The Torts Claims Act² governs lawsuits against political subdivisions and their employees. Among other things, the statute provides immunity for conduct within the scope of the employee's employment. *See* I.C. 34-13-3-3 (setting forth twenty-two categories for which immunity attaches). Indiana Code § 34-13-3-3(6) immunizes prosecutors and their employees from civil liability for torts committed during the initiation of a judicial proceeding.

A judicial proceeding in the context of governmental immunity has been defined as a proceeding for the purpose of obtaining such remedy as the law allows. *Indiana Department of Financial Institutions v. Worthington Bancshares, Inc.*, 728 N.E.2d 899, 902 (Ind. Ct. App. 2000), *trans. denied*. This court has previously explained that the issuance of a warrant constitutes the initiation of a judicial proceeding. *Edwards v. Vermillion County Hospital*, 579 N.E.2d 1347, 1348 (Ind. Ct. App. 1991), *trans. denied*. Here, because the error occurred during the initiation of a judicial proceeding, the defendants from the Prosecutor's Office were immune from liability. *See* Ind. Code 13-3-3-3(6).

The Oklahoma Court of Civil Appeals reached the same result in *White v. State Ex Rel. Harris*, 122 P.3d 484 (Okla. Ct. App. 2005), *cert. denied*. There, the victim described the suspect, Edward Dean White, as a black male with black hair and brown eyes, who was 6' tall and weighed 175 pounds. However, the District Attorney's office clerk that prepared the warrant described the suspect as an Indian male, with black hair and green eyes. The warrant listed the date of birth, social security number, and home address of the black male. White, the

²Indiana Code § 34-13-3-1 et seq.

Indian male with the black hair and green eyes, was arrested the following day. After the charges against him were dismissed, White filed a multi-count complaint alleging negligence, false arrest, and false imprisonment against the District Attorney's office. The trial court granted the District Attorney's motion to dismiss, and White appealed.

The Oklahoma Court of Civil Appeals affirmed the dismissal. Specifically, the court stated that the District Attorney's actions in preparing and obtaining an arrest warrant were part of his prosecutorial functions. *Id.* at 488. According to the court, the issuance of a warrant is the initiation of prosecution. *Id.* (citing *McCollum v. Garrett*, 880 S.W.2d 530, 535 (Ky. 1994)). As a result, the court concluded that the District Attorney was immune from liability. *See also Ford v. Kenosha County*, 466 N.W.2d 646 (Wis. 1991) (holding that the District Attorney's Office personnel were immune from liability for alleged negligence in the preparation of a bench warrant); *Jackson v. Multnomah County*, 709 P.2d 1153 (Or. Ct. App. 1985) (holding that deputy District Attorney and data entry clerk were immune from liability for negligent preparation of a warrant). We find no error.

II. Allen County Sheriff's Department

The Lemmons next argue that the trial court erred in granting the motion to dismiss filed by the Allen County Sheriff, the Sheriff's Department, and unnamed employees of the Department, individually and in their official capacities. The defendants from the Sheriff's Department respond that were simply executing a warrant as ordered by the Allen Circuit Court, and that they are immune from liability.

Long v. Barrett, 818 N.E.2d 18 (Ind. Ct. App. 2004), *trans. denied*, is instructive. In *Long*, an arrest warrant was issued for China G. Long. An amended warrant omitted the middle

initial “G.” Marion County Sheriff’s Department Deputies executed the warrant and arrested China A. Long. After Long was released, she filed suit against the deputies individually and in their professional capacity. In her complaint, she alleged that the deputies committed the intentional torts of false arrest and false imprisonment. She also alleged that the deputies negligently and carelessly altered the arrest warrant, and that they acted maliciously, willfully, and wantonly. The trial court granted summary judgment in favor of the officers, and Long appealed.

After reviewing the case, we held that the deputies were immune in their professional capacity because they were executing a facially valid warrant. *Id.* at 24. *See also Barnes v. Wilson*, 450 N.E.2d 1030, 1033 (Ind. Ct. App. 1983) (holding that “where an officer executes a warrant, and believes in good faith that the person taken into custody is the person named in the warrant, the officer will not be civilly liable in an action for false imprisonment absent circumstances tending to suggest that the wrong person has been arrested”); *Stine v. Shuttle*, 134 Ind. App. 67, 186 N.E.2d 168, 172 (1962) (stating that a “warrant not void on its face issued by a tribunal having general jurisdiction of the subject matter is a protection to the officer executing it, and the officer is not required to look beyond the process or warrant to determine the validity of the proceedings on which it is founded”).

We also noted that the deputies were immune from liability on an individual basis because Long’s factual allegations as to the deputies’ conduct did not reflect any conduct that could reasonably be found to be malicious or willful and wanton. Rather, the deputies were simply executing a facially valid warrant.

Although we affirmed the trial court's grant of summary judgment in favor of the deputies, we stated as follows:

[W]e strongly admonish the various personnel involved in drawing up arrest warrants to keep in mind that they are setting in process a mechanism whereby a citizen may be improperly deprived of personal freedom and liberty. This is not a task to be undertaken lightly, and the ultimate consequence should never be forgotten in workplace haste or everyday routine. One cannot help but regret the errors that were made herein, and the loss suffered in such an instance is not only that of Long but of the judicial system as a whole.

Long, 818 N.E.2d at 24.

The facts before us are analogous to those in *Long*. Here, the Lemmons alleged the Sheriff, his department, and his deputies committed false imprisonment and false arrest. In addition, like Long, the Lemmons filed suit against the deputies individually and in their professional capacity.

Our review of the complaint reveals that the defendants from the Sheriff's Office, like the defendants in *Long*, were immune because they were executing a facially valid warrant.³ The deputies were also immune from liability on an individual basis because the Lemmons' factual allegations as to the deputies' conduct does not reflect any conduct that could reasonably be found to be malicious or willful and wanton. Rather, as in *Long*, the deputies were simply executing a facially valid warrant.

³ To the extent the Lemmons assert that the warrant in this case was facially deficient, we note that none of the facts alleged in the complaint support their assertion. Rather, the warrant in this case is regular on its face, appeared to be valid, and gave no indication that anything more needed to be done other than execute it. Only if the deputies knew or had reason to know that the warrant was supposed to be for James E. Lemmon would they have been alerted that something was amiss. However, there is no such evidence in the record. The warrant in this case was facially valid. See *Leshore v. State*, 755 N.E.2d 164, 166 (Ind. 2001).

We therefore affirm the trial court's dismissal of the Lemmons' claims against the Sheriff, his department, and his unnamed deputies. However, as we did in *Long*, we strongly admonish the personnel involved in drawing up arrest warrants that the ultimate consequence of their errors should not be forgotten.

CONCLUSION

The trial court did not err in granting the motions to dismiss.

Affirmed.

MAY, J., and ROBB, J., concur.